

# Notice of Allowability

Application No.

09/633,326

Examiner

Yemane M Gerezgiher

Applicant(s)

NACE ET AL.

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 07/20/2004.
2. ☒ The allowed claim(s) is/are 1-21.
3. ☒ The drawings filed on 07 August 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

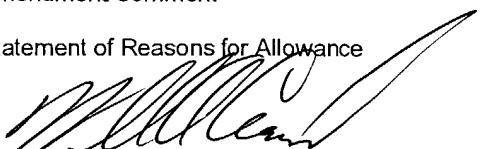
Applicant has **THREE MONTHS** FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
WILLIAM A. CUCHLINSKI, JR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

### REASON FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance:

None of the prior art of record taken singularly or in combination taught or suggested a system where a client **provides a desired rate** of requests by calculating an actual rate of requests generated and adjusting the actual rate to within a prearranged range of the desired rate and further by sampling the actual rate of requests generated and increasing actual rate of requests if the generated actual rate of requests are below the target rate of request providing consistent (fixed or continual) rate of requests to the server in order to assist in measuring/determining the capacity of a web server. The limitations are supported by the specification of the application. See Specification Page 5, Lines 1-14, Page 6, Line 19 through Page 7, Line 4, Source Code on Page 8, Line 19 through Page 9, Line 19, Figures 1, 2 and 6 and applicant's remark (Appeal Brief) Page 3 though 6.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on a Statement of Reasons for Allowance."

### EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Mr. AMIN, HIMANSHU on 08/18/2004 at 11:18 AM. Claim 17 is amended as follows:


17. **(Currently Amended)** A system for determining capacity of a server, comprising:

means for generating a plurality of requests to the server, said means providing a desired rate of requests by calculating actual rate of requests being generated; and **means for** adjusting the actual rate to within a predetermined range of the desired rate such that a continual rate of requests are provided to the server in order to facilitate determining server capacity.

1. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Yemane Gerezgiher whose telephone number is 703-305-4874. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, William Cuchlinski, can be reached at (703) 308-3873.

Yemane M. Gerezgiher  
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